

EX. 9

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JARI MCPHERSON, JERALD)
SAMS, AND DANIEL MARTINEZ,)
)
 Plaintiffs,)
) CIVIL ACTION
VS.)
) NO.: 1:20-cv-01223-DAE
TEXAS DEPARTMENT OF PUBLIC)
SAFETY,)
)
 Defendant.)

REMOTE ORAL DEPOSITION OF
OSCAR HOLGUIN
NOVEMBER 15, 2022

REMOTE ORAL DEPOSITION OF OSCAR HOLGUIN, produced
as a witness at the instance of the PLAINTIFFS, and
duly sworn, was taken in the above-styled and
numbered cause on November 15, 2022, from 10:15 a.m.
to 2:47 p.m., via Zoom, before Vanessa J. Theisen,
CSR in and for the State of Texas, reported by
machine shorthand, pursuant to the Federal Rules of
Civil Procedure and any provisions stated on the
record or attached hereto.

<p style="text-align: right;">34</p> <p>1 Q. Okay.</p> <p>2 A. You know, solve their differences.</p> <p>3 Q. I understand, I understand. Did that work</p> <p>4 out?</p> <p>5 A. At time -- at that time, it helped. I'm</p> <p>6 not -- I can't -- I cannot say that it was resolved,</p> <p>7 but it helped.</p> <p>8 Q. Okay. Did this occur just as Mr. McPherson</p> <p>9 arrived at your unit in Temple?</p> <p>10 A. I don't believe so. I think it was more --</p> <p>11 after a few months.</p> <p>12 Q. Okay. All right. Did you sense that there</p> <p>13 was anything racial about this underlying refusal or</p> <p>14 reluctance by Mr. Buenger to work with Mr. McPherson?</p> <p>15 MR. HARRIS: Object to the form of the</p> <p>16 question.</p> <p>17 Q. (BY MR. MUNGO) Do you understand my</p> <p>18 question?</p> <p>19 A. Yes.</p> <p>20 Q. Did you -- did you sense that there was any</p> <p>21 racial elements to whatever degree it was that were</p> <p>22 underlying this difference between Mr. Buenger and</p> <p>23 Mr. McPherson?</p> <p>24 MR. HARRIS: Objection. Calls for</p> <p>25 speculation.</p>	<p style="text-align: right;">36</p> <p>1 agents, who was your direct supervisor?</p> <p>2 A. My direct supervisor was Captain Steven</p> <p>3 Schwartz.</p> <p>4 Q. Steven Schwartz, okay. Did there ever come</p> <p>5 a time where you had conversations with Captain</p> <p>6 Steven Schwartz regarding Mr. McPherson specifically?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And I want you to take me back, as</p> <p>9 best your memory will allow you, to the first</p> <p>10 conversations that you had with Captain Schwartz</p> <p>11 regarding Mr. McPherson.</p> <p>12 A. If you can give me a few -- let me see.</p> <p>13 Well, he did advise that we were going</p> <p>14 to -- we were going to receive a new agent from RSD</p> <p>15 and his name was Jari McPherson. And I did advise</p> <p>16 Captain Schwartz that I knew McPherson from previous</p> <p>17 working with him as a trooper. And that was some of</p> <p>18 the conversation that we had at first, yes.</p> <p>19 Q. Okay. And do you recall Captain Schwartz --</p> <p>20 any comments that Captain Schwartz made to you or</p> <p>21 statements that Captain Schwartz made to you that</p> <p>22 were negative concerning and about Mr. McPherson?</p> <p>23 A. At the time, no. We were kind of glad that</p> <p>24 we had another agent to assist us actually. I was --</p> <p>25 I was very, very delighted that we had two more</p>
<p style="text-align: right;">35</p> <p>1 Q. (BY MR. MUNGO) You can go ahead, sir.</p> <p>2 A. I cannot speculate on that, because it</p> <p>3 wasn't -- it wasn't addressed. There was</p> <p>4 no significant -- there wasn't anything that Buenger</p> <p>5 said that was racial towards not helping or assisting</p> <p>6 Jari. I think it was more differences at the time.</p> <p>7 Q. Okay, all right. So had you actually</p> <p>8 eliminated race as a factor in that difference?</p> <p>9 A. At the time I'm more -- I thought it was</p> <p>10 more of a work and -- work ethic and different</p> <p>11 working strategies. Yes, I did.</p> <p>12 Q. Okay. But you weren't in a position to say</p> <p>13 that race was not an issue, correct?</p> <p>14 A. No, no.</p> <p>15 Q. No, you were not in a position to say race</p> <p>16 was not an issue. That's what you're saying?</p> <p>17 A. Yes, yes.</p> <p>18 Q. Okay.</p> <p>19 A. Sorry, sorry. Yes.</p> <p>20 Q. That's all right. That's quite all right.</p> <p>21 Did there come a time in which you had</p> <p>22 conversations with -- well, strike that.</p> <p>23 Who was your immediate supervisor at</p> <p>24 that time? At the time you were supervising the CID</p> <p>25 unit, which you just described all of your special</p>	<p style="text-align: right;">37</p> <p>1 agents because we had a lot of investigations that we</p> <p>2 needed, and I believe that Jari would have made a</p> <p>3 good asset to our unit.</p> <p>4 Q. Okay. And did Captain Schwartz ever say</p> <p>5 anything to you negative or to speak down to you</p> <p>6 about Mr. McPherson?</p> <p>7 A. Not at the time then, he never -- he didn't.</p> <p>8 He didn't. Not to me. I cannot speculate in that.</p> <p>9 As we went through and we had -- when I</p> <p>10 was directed to monitor Jari, then, yes, we did.</p> <p>11 Q. Okay. So then, just to make sure I got your</p> <p>12 testimony accurate, I asked you the question if</p> <p>13 Captain Schwartz ever spoke negatively about</p> <p>14 Mr. McPherson. He did, correct, as you're telling me</p> <p>15 now that it's -- that began at a certain point in</p> <p>16 time, but he did speak negatively about</p> <p>17 Mr. McPherson. Is that correct?</p> <p>18 A. He was concerned about the situations that</p> <p>19 were arising with Mr. McPherson.</p> <p>20 Q. Okay.</p> <p>21 A. Yes.</p> <p>22 Q. So -- and in expressing that, Mr. Holguin,</p> <p>23 did he speak negatively about Mr. McPherson, or did</p> <p>24 he speak positively about him?</p> <p>25 MR. HARRIS: Object to the form of the</p>

<p>38</p> <p>1 question.</p> <p>2 A. Again, he did express concern. It wasn't</p> <p>3 negative, but it was concern for the unit at the</p> <p>4 time.</p> <p>5 Q. (BY MR. MUNGO) Okay. And did Captain</p> <p>6 Schwartz indicate to you that he received comments</p> <p>7 from his acquaintances about Mr. McPherson that</p> <p>8 wasn't positive?</p> <p>9 A. Yes, I recall that.</p> <p>10 Q. Okay. And as a result of that, did Captain</p> <p>11 Schwartz ask you to monitor Mr. McPherson?</p> <p>12 A. I was being directed by Captain Schwartz to</p> <p>13 monitor McPherson.</p> <p>14 Q. Okay. Did Captain Schwartz ever ask you to</p> <p>15 monitor any of your other special agents?</p> <p>16 A. Yes.</p> <p>17 Q. And who did he ask you to monitor?</p> <p>18 A. He asked me to monitor Greg Lanford.</p> <p>19 Q. Any others?</p> <p>20 A. No.</p> <p>21 Q. Okay. And what did he ask you to monitor</p> <p>22 regarding Greg Lanford?</p> <p>23 A. Mr. Greg Lanford was going through some</p> <p>24 personal issues, and I had to monitor him in regards</p> <p>25 to his investigations.</p>	<p>40</p> <p>1 At this point in time, did Captain</p> <p>2 Schwartz ask you to perform this kind of monitoring</p> <p>3 on any of the white agents?</p> <p>4 A. At the time, no.</p> <p>5 Q. Okay. All right. Okay. Go ahead. So you</p> <p>6 left off at monitoring and checking his gas receipts,</p> <p>7 the time he came in, the time he left. Okay. Go</p> <p>8 ahead.</p> <p>9 A. And supply him with his daily -- daily</p> <p>10 activity, which was -- which was the weeklies. Also</p> <p>11 the gas receipts every month that we have to turn in</p> <p>12 through -- which is required for all of the vehicles,</p> <p>13 the CID vehicles -- the gas receipts and what time</p> <p>14 they were -- he purchased gas and also just to</p> <p>15 monitor the -- keep an eye on the weekly. And his</p> <p>16 investigations, which was also everybody else's</p> <p>17 investigations.</p> <p>18 Q. Okay. So Captain Schwartz wanted you to</p> <p>19 provide him with a copy of Mr. McPherson's gas</p> <p>20 receipts?</p> <p>21 A. Yes.</p> <p>22 Q. Did you provide Captain McPherson [sic] with</p> <p>23 any of the other special agents' gas receipts?</p> <p>24 A. Not McPherson but the captain. No, no.</p> <p>25 There --</p>
<p>39</p> <p>1 Q. Can you expand on that at all?</p> <p>2 A. He was having marital problems, and I</p> <p>3 helped -- I assisted him with giving him numbers to</p> <p>4 counseling and also helped him whenever he needed</p> <p>5 some time off to help him with his spouse.</p> <p>6 Q. Okay, okay. And that was the kind of</p> <p>7 monitoring you were doing for Lanford, correct?</p> <p>8 A. (Nodding head up and down.)</p> <p>9 Q. Okay. Now what kind of monitoring did</p> <p>10 Captain Schwartz ask you to perform with regard to</p> <p>11 Mr. McPherson? For example, did he ask you to</p> <p>12 monitor his whereabouts with his vehicle or anything</p> <p>13 else, or did -- you get my point? So can you expand</p> <p>14 as much as you can, as much detail in terms of the</p> <p>15 monitoring that Captain Schwartz asked you to perform</p> <p>16 with regard to McPherson? Take them item by item.</p> <p>17 A. Yes. He asked me to monitor when he came</p> <p>18 into work, when he left. Also supply him with gas</p> <p>19 receipts through --</p> <p>20 Q. Okay. Now, can we -- can I -- and I</p> <p>21 apologize because I kind of -- I'm going to kind of</p> <p>22 stop you at different points because it's a perfect</p> <p>23 time rather than going back --</p> <p>24 A. Okay.</p> <p>25 Q. -- and straining your memory.</p>	<p>41</p> <p>1 Q. Okay. So let me -- I need to go back on</p> <p>2 that one again, if you don't mind, just to make sure</p> <p>3 our record is clear.</p> <p>4 Did Captain Schwartz ask you to provide</p> <p>5 him with a physical copy of the gas receipts from any</p> <p>6 of the other special agents?</p> <p>7 A. No, not at the time.</p> <p>8 Q. Okay, all right. All right. So, so far all</p> <p>9 of these items in terms of monitoring that you are</p> <p>10 citing that Captain Schwartz directed you to monitor</p> <p>11 Mr. McPherson for was only asked of you to do in</p> <p>12 regards to McPherson and none of the white agents.</p> <p>13 Is that correct?</p> <p>14 MR. HARRIS: Object to the form of the</p> <p>15 question.</p> <p>16 A. Okay. Can you repeat that again?</p> <p>17 Q. (BY MR. MUNGO) Yeah, yeah. So, so far all</p> <p>18 of the items of monitoring that you provided me that</p> <p>19 Captain Schwartz directed you to conduct regarding</p> <p>20 Mr. McPherson, Captain Schwartz had not directed you</p> <p>21 to do this regarding the white agents, correct?</p> <p>22 MR. HARRIS: Object to the form of the</p> <p>23 question.</p> <p>24 A. Correct. We --</p> <p>25 Q. (BY MR. MUNGO) Okay.</p>

<p style="text-align: right;">42</p> <p>1 A. Yes. At the time.</p> <p>2 Q. Okay. Thank you.</p> <p>3 Okay. What else? What else did he ask</p> <p>4 you to do in terms of monitoring Mr. McPherson?</p> <p>5 A. Monitoring when -- the beginning of his</p> <p>6 shift and the ending of his shift.</p> <p>7 Q. Yes, sir.</p> <p>8 A. That's what I was being directed by.</p> <p>9 Q. Okay. Yes, sir.</p> <p>10 Did Captain Schwartz ever discuss with</p> <p>11 you or request of you to obtain any video</p> <p>12 surveillance of Mr. McPherson?</p> <p>13 A. He did request a video surveillance when he</p> <p>14 was --</p> <p>15 Q. When you say "he," who are you --</p> <p>16 A. Oh, I'm sorry. Captain Schwartz did request</p> <p>17 for me to get a video surveillance at his -- at</p> <p>18 McPherson's child's school, but I refused to do that.</p> <p>19 Q. And why did you refuse to do that, sir?</p> <p>20 A. I did not believe that it was -- that it was</p> <p>21 required.</p> <p>22 Q. Did you --</p> <p>23 A. And I didn't -- I didn't agree with that.</p> <p>24 Q. And did Captain Schwartz express his</p> <p>25 displeasure with you because of that, because of your</p>	<p style="text-align: right;">44</p> <p>1 MR. HARRIS: Object to the form of the</p> <p>2 question.</p> <p>3 A. Well, sir, I can't -- I can't speculate on</p> <p>4 that. He -- at the time, no, he didn't.</p> <p>5 Q. (BY MR. MUNGO) Had he ever asked you to</p> <p>6 collect video surveillance on any of the -- any of</p> <p>7 your white special agents, ever?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 MR. HARRIS: We've been going on for a</p> <p>11 bit over an hour. Might this be a good time to take</p> <p>12 a morning break?</p> <p>13 MR. MUNGO: If you -- I'm good for that,</p> <p>14 sir. I'm good for that.</p> <p>15 MR. HARRIS: Okay.</p> <p>16 MR. MUNGO: So let's set a time to</p> <p>17 rendezvous back.</p> <p>18 MR. HARRIS: How about 15 minutes?</p> <p>19 MR. MUNGO: 15 minutes is fine. So</p> <p>20 we're back then at, what, 12:30? You want to just</p> <p>21 say 12:30? Well, wait a minute. It's 11:00 -- that</p> <p>22 would be 11:30 your time, wouldn't it?</p> <p>23 MR. HARRIS: Correct.</p> <p>24 MR. MUNGO: Okay. 11:30 it is.</p> <p>25 MR. HARRIS: All right.</p>
<p style="text-align: right;">43</p> <p>1 refusal to do that?</p> <p>2 A. Well, he -- yes, yes, he did. But, I mean,</p> <p>3 I'm not going -- I didn't do it.</p> <p>4 Q. So can you articulate for the record -- it's</p> <p>5 important that we have your account as to why you did</p> <p>6 not do that, sir.</p> <p>7 A. I felt that it was not adequate for me to do</p> <p>8 that. I'm not going to be checking somebody. I</p> <p>9 would -- I would rather have them tell me, or, if I</p> <p>10 was to ask them, "Did you go here for this certain"</p> <p>11 -- maybe he had a program to go -- to go and see his</p> <p>12 child.</p> <p>13 I gave -- I gave everybody the benefit</p> <p>14 of the doubt because you do deal with the public each</p> <p>15 and every day as an agent, as a police officer, and</p> <p>16 my thought was he is pretty much getting to know his</p> <p>17 neighborhood, letting them know that he is available,</p> <p>18 that he is a police officer. And I don't -- I</p> <p>19 wouldn't want to check up on something if -- those</p> <p>20 are some of our police officer duties, to be with the</p> <p>21 public.</p> <p>22 Q. Yes, sir. Had Captain Schwartz ever asked</p> <p>23 you at any point in time to retrieve or capture or</p> <p>24 collect any video surveillance on any of the white</p> <p>25 special agents?</p>	<p style="text-align: right;">45</p> <p>1 MR. MUNGO: Thank you, sir.</p> <p>2 MR. HARRIS: Yeah. 11:30. That sounds</p> <p>3 good. Okay. 15 minutes?</p> <p>4 THE REPORTER: Yeah, that's -- that's</p> <p>5 eight minutes from now.</p> <p>6 MR. MUNGO: I'm sorry. I'm sorry. Did</p> <p>7 I -- we're coming back at 11:30 your time, correct?</p> <p>8 MR. HARRIS: 11:30 my time. That's</p> <p>9 correct.</p> <p>10 MR. MUNGO: Oh, no. Sorry.</p> <p>11 MR. HARRIS: Well, that's -- only gives</p> <p>12 us eight minutes. Can we get 15 minutes so we can</p> <p>13 use the bathroom?</p> <p>14 MR. MUNGO: Yeah. I'm sorry. My math</p> <p>15 is not very good right now, right? So yeah, just</p> <p>16 give me the time. Give me the time.</p> <p>17 THE REPORTER: How about 11:40?</p> <p>18 MR. MUNGO: 11:40?</p> <p>19 THE REPORTER: Yeah.</p> <p>20 MR. MUNGO: Okay. Perfect. Thank you.</p> <p>21 THE REPORTER: Thanks.</p> <p>22 MR. HARRIS: Thank you.</p> <p>23 THE REPORTER: Off the record at 11:23</p> <p>24 Central Standard Time. Thanks.</p> <p>25 (Recess from 11:23 a.m. to 11:42 a.m.)</p>

<p style="text-align: right;">46</p> <p>1 THE REPORTER: Back on the record at 2 11:42. 3 MR. MUNGO: Thank you. 4 Q. (BY MR. MUNGO) Mr. Holguin, you indicated 5 that when Mr. McPherson first arrived in Temple as 6 part of your CID unit that Schwartz made comments 7 about him. Do you recall what those comments were? 8 A. -- exactly what -- what those comments were. 9 THE REPORTER: Yeah, I'm sorry. Can you 10 start your answer over again? 11 THE WITNESS: Oh, I'm sorry. 12 THE REPORTER: No. For some reason the 13 first few words didn't come through. 14 A. I said I do not recall what the comments 15 were towards McPherson. I do know that later he 16 commented that his colleagues had told him about some 17 of the -- about McPherson. 18 I didn't know -- I don't know who it 19 was. He never expressed the names of his colleagues. 20 Q. (BY MR. MUNGO) Yes, sir. Did he -- he did 21 indicate, though, what some of those comments were, 22 or at least the nature of some of those comments, 23 correct? 24 A. That I recall, just that he had been under 25 an investigation. I do -- I do recall that, that he</p>	<p style="text-align: right;">48</p> <p>1 MR. HARRIS: Objection to the form of 2 the question. 3 A. Captain Schwartz advised me of that, that he 4 thought that it wasn't sustained. Again, it was just 5 a conversation that we had in that. I didn't know 6 the details, and I don't know if Steven Schwartz knew 7 the outcome, he just said that it was -- it was not 8 sustained. 9 Q. (BY MR. MUNGO) Okay, okay. And as a result 10 of these kinds of comments that Schwartz received 11 from others, whom he did not identify to you, Captain 12 Schwartz pursued -- or Captain Schwartz requested 13 that you begin to monitor Mr. McPherson at least in 14 part because of that previous investigation. Is that 15 correct? 16 A. I cannot testify to that because he 17 didn't -- he directed me to monitor him, but I can't 18 say because of the -- because of that allegation. 19 Q. All right. So you're not a mind reader? 20 A. Exactly. I -- 21 Q. But the request to monitor him came after 22 Captain Schwartz made those comments, correct? 23 A. Well, after he told me that, he did direct 24 me to monitor him. 25 Q. So then the answer to my question is, yes,</p>
<p style="text-align: right;">47</p> <p>1 was under an investigation when he was in RSD. I 2 don't know the outcome of that investigation. 3 Other than that, I don't recall anything 4 in regards to that, but there was a comment about 5 Mr. McPherson being under investigation. I don't -- 6 like, again, I don't know the whole con -- the whole 7 -- the allegations that were towards McPherson, but 8 it was commented that he was under some type of 9 investigation. 10 Q. Okay. And this is what Schwartz shared with 11 you, correct? 12 A. Yes. 13 Q. Okay. And when he shared that with you, 14 sir, did he share that with you as in present tense 15 or past tense, the investigation, or what is your 16 recollection? 17 A. My recollect -- it was past tense. I think 18 that he had commented that it was a prior 19 investigation on McPherson. Again, I don't recall 20 the whole -- the whole thing about it. I know 21 that -- I don't think it was sustained that -- those 22 allegations. So he did comment on that, yes. I do 23 recall that. 24 Q. How did you learn that the results of the 25 investigation did not sustain the accusation?</p>	<p style="text-align: right;">49</p> <p>1 right? 2 MR. HARRIS: Objection to the form. 3 Q. (BY MR. MUNGO) That he asked you to monitor 4 -- he asked you to monitor Mr. McPherson after he 5 made those comments to you about a previous 6 investigation that Mr. McPherson was under, correct? 7 A. Well, after he said that, well, yes, he did 8 ask me to monitor. 9 Q. Okay, okay. And this was done right upon 10 Mr. McPherson's arrival at Temple, correct? 11 A. Let me see, sir. Because he arrived in May, 12 so probably after two months, three months. I think 13 it was June, July, or August. 14 Q. Okay. Very good -- 15 A. I mean, that I recall. I could be wrong, 16 yes. 17 Q. All right. Did -- had any of the special 18 agents, any of the other special agents that were 19 reporting to you in your unit, Mr. Holguin, undergo 20 any investigations previous to them reporting to you? 21 A. I don't know. The time that I was there, I 22 did not ask if they had prior investigations upon 23 them. I can't answer that yes or no because I do not 24 know. 25 Q. Fair enough, fair enough. You don't know.</p>

<p>50</p> <p>1 Had any of them undergone any</p> <p>2 investigations subsequent to you supervising that</p> <p>3 particular CID unit?</p> <p>4 A. No, not the time that I was there.</p> <p>5 Q. So you know that some of the white agents</p> <p>6 were -- special agents were investigated, but they</p> <p>7 weren't -- but not while you were supervising them?</p> <p>8 A. Not while I was there. During the year and</p> <p>9 a half that I was there with them, none of them were</p> <p>10 under investigation. There were -- oh, you know</p> <p>11 what? I'm sorry, I apologize.</p> <p>12 There were a -- some -- some complaints</p> <p>13 on the -- two of my agents, which was Chad Buenger</p> <p>14 and Michael Boyett, but it was more of a criminal</p> <p>15 aspect. They complained that it was an illegal</p> <p>16 search, which it was a legal search, and the person</p> <p>17 was convicted. But it was more of a citizen</p> <p>18 complaint, which we reviewed it, and we sent it up to</p> <p>19 OIG. And OIG -- our OIG, which is Office of Internal</p> <p>20 Affairs, they're the ones that investigated the</p> <p>21 accusations, and they came out that they were not in</p> <p>22 violation.</p> <p>23 But yes, I do recall that, yes. They --</p> <p>24 but it was -- it wasn't an investigation. It was</p> <p>25 more of a complaint.</p>	<p>52</p> <p>1 Q. And what was the rationale that was given,</p> <p>2 if any, by Captain Schwartz for you not to worry</p> <p>3 about those complaints?</p> <p>4 A. He advised that they were legal searches and</p> <p>5 that -- his opinion was that they were legal searches</p> <p>6 and that they were -- they were okay. So it wasn't</p> <p>7 going to be any type of reprimand or any other</p> <p>8 allegations to proceed with the investigation.</p> <p>9 Q. Okay. That wasn't your opinion at the</p> <p>10 beginning, was it?</p> <p>11 A. At the time -- at the time it was a legal</p> <p>12 search because of the facts that were given to me,</p> <p>13 and it was more of a complaint to my agents at the</p> <p>14 time.</p> <p>15 Q. All right. So then let me just make sure</p> <p>16 I'm tracking you accurately.</p> <p>17 That a complaint was made by citizens,</p> <p>18 but no investigation was taken into the circumstances</p> <p>19 and those events. Is that correct?</p> <p>20 A. Correct. That I know of, correct.</p> <p>21 Q. Okay. Okay. So then the -- all right. So</p> <p>22 then the -- do you recall the nature of the</p> <p>23 investigation that Mr. McPherson was allegedly under</p> <p>24 that Captain Schwartz referenced?</p> <p>25 A. Yes.</p>
<p>51</p> <p>1 Q. Okay. But you don't know whether or not</p> <p>2 they were investigated, correct?</p> <p>3 A. Correct.</p> <p>4 MR. HARRIS: Object to the form of the</p> <p>5 question.</p> <p>6 Q. (BY MR. MUNGO) I'm -- go ahead, you can</p> <p>7 answer the question, sir.</p> <p>8 A. Correct, I didn't know.</p> <p>9 Q. Did Mr. McPherson ever tell you that there</p> <p>10 were investigations, but Schwartz covered it up?</p> <p>11 Captain Schwartz covered them up, the investigations</p> <p>12 and the complaints against the white special agents?</p> <p>13 A. That I recall, I can't -- I apologize. My</p> <p>14 memory doesn't -- I don't know if you -- to say no --</p> <p>15 no, I can't recall.</p> <p>16 Q. Did Captain Schwartz ever tell you not to</p> <p>17 worry about those complaints?</p> <p>18 A. Yes, he said not to worry about those</p> <p>19 complaints because he knew that -- I mean, we -- he</p> <p>20 knew that there wasn't going to be a -- that it</p> <p>21 wasn't going to push forward because it was a legal</p> <p>22 search.</p> <p>23 Q. I'm sorry. Repeat that. I'm sorry.</p> <p>24 A. Yes. He did tell me not to worry about</p> <p>25 those complaints.</p>	<p>53</p> <p>1 Q. What was the nature, if you recall, of that</p> <p>2 investigation?</p> <p>3 A. The nature that I recall was that he used</p> <p>4 his vehicle to transport his child from his -- from</p> <p>5 her school to the doctor's office.</p> <p>6 Q. I see. So he took his child to the doctor's</p> <p>7 office. Is that unusual for special agents to use</p> <p>8 the vehicle for such purposes?</p> <p>9 A. Well, sir, everybody has had to pick up</p> <p>10 their child at one point or another because of an</p> <p>11 emergency situation. And --</p> <p>12 Q. Yeah, go ahead.</p> <p>13 A. And it's not -- it's against policy, but</p> <p>14 what are you going to do if your child is in an</p> <p>15 emergency?</p> <p>16 Q. Right.</p> <p>17 A. That's what -- you know, you would do that.</p> <p>18 Q. Uh-huh. But other officers and special</p> <p>19 agents have done that though, correct?</p> <p>20 A. I cannot say. I don't know what others have</p> <p>21 done, but it's not unusual for -- to go to your --</p> <p>22 your child's school in case of emergency and pick</p> <p>23 them up. It's just -- it happens. In certain</p> <p>24 situations, it happens.</p> <p>25 Q. So you know this to be a common practice</p>

<p>54</p> <p>1 amongst special agents and officers and troopers, 2 correct? Even though you may not have any specific 3 instances that you may reference right now, you know 4 this to be a common practice either by what you've 5 heard, other people talking about it and/or directly 6 observed, you know this to be a common practice, 7 correct?</p> <p>8 MR. HARRIS: Object to the form of the 9 question.</p> <p>10 A. I cannot speculate. I mean, there's been 11 situations where you have -- you, as a police 12 officer, have done that, yes.</p> <p>13 Q. (BY MR. MUNGO) Okay. Can you explain that 14 in a little bit more detail?</p> <p>15 A. A current -- an example would be if you are 16 assisting somebody on the side of the road, being a 17 police officer, it is against policy, I mean, to have 18 a person in your vehicle, giving them a ride to the 19 gas station, giving them a ride to somewhere because 20 you are doing a motorist assist.</p> <p>21 We are required -- I mean us, as police 22 officers, we have that -- we are peace officers. 23 We're going to assist the public in any which way 24 that we can. And there's instances where we may have 25 to use our vehicle to do that. That's one example.</p>	<p>56</p> <p>1 I called him, told him that I was going to take my 2 child to school and then go on to the office.</p> <p>3 Q. Okay, all right.</p> <p>4 MR. MUNGO: Excuse me just a moment, 5 please.</p> <p>6 (Brief pause.)</p> <p>7 Q. (BY MR. MUNGO) Okay. Have you known other 8 officers to do the same thing, sir? Not the exact 9 same thing, but use their vehicles, as you were 10 describing earlier, to transport those who are 11 non-agency personnel?</p> <p>12 A. Yes.</p> <p>13 Q. Have you known them to be disciplined?</p> <p>14 A. Yes.</p> <p>15 Q. In every instance?</p> <p>16 A. No --</p> <p>17 MR. HARRIS: Object to the form of the 18 question.</p> <p>19 A. No, but I can't speculate.</p> <p>20 Q. (BY MR. MUNGO) Yeah, but that's not 21 speculating when you say no. When you gave me the 22 answer no just now, you weren't speculating, were 23 you?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>
<p>55</p> <p>1 Another example would be that you are in 2 a parade and you have an individual that is riding 3 with you that is not a DPS employee or another police 4 officer in your vehicle. So those are two examples 5 that we do have that.</p> <p>6 And like I said, again, the first 7 example is for us to assist the public. Our motto is 8 "Courtesy, Service, and Protection," and that's what 9 we do. And if it be against policy, well, we would 10 have to -- we would have to do that and we would 11 notify our supervisor for it.</p> <p>12 Q. Okay, all right. Are you knowledgeable of 13 anyone that has ever been disciplined for doing the 14 same?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And who would that be?</p> <p>17 A. Myself.</p> <p>18 Q. Okay, okay. And what did you do?</p> <p>19 A. There was a time that I was stationed in -- 20 when I was stationed in Temple, my child didn't make 21 the bus. And it was raining outside, and I drove 22 her -- drove her and dropped her off at her school on 23 the way to work to my office there in Temple.</p> <p>24 And I did advise my supervisor, which 25 happened to be Captain Schwartz, of what I had done.</p>	<p>57</p> <p>1 A. No, I wasn't.</p> <p>2 Q. Okay. All right. Were any of these 3 individuals that you have known that have done it 4 before but were not disciplined, did you know what 5 their race was?</p> <p>6 A. No, I didn't. It was a -- both white males 7 and Hispanic males that I worked with.</p> <p>8 Q. That engaged in the same conduct but was not 9 disciplined?</p> <p>10 A. Yes.</p> <p>11 Q. Okay, all right. The same and similar 12 conduct that Mr. McPherson engaged in, correct?</p> <p>13 MR. HARRIS: Object to the form of the 14 question.</p> <p>15 A. Yes.</p> <p>16 Q. (BY MR. MUNGO) Okay. All right. But you 17 have never known an African American trooper and/or 18 special agent that engaged in that same or similar 19 conduct that was disciplined or that -- that did it 20 and wasn't disciplined, correct?</p> <p>21 MR. HARRIS: Object to the form of the 22 question.</p> <p>23 A. Well, sir, I hadn't worked with African 24 Americans in El Paso. Well, I take that back. I 25 had, but they were not engaged in that, and they</p>

<p>58</p> <p>1 weren't disciplined, no. But the majority of the --</p> <p>2 of my colleagues were Hispanic and white.</p> <p>3 Q. (BY MR. MUNGO) Yeah, but what I'm -- what</p> <p>4 I'm asking is have you ever known an African American</p> <p>5 to engage in that same or similar conduct and were</p> <p>6 not disciplined?</p> <p>7 A. I couldn't tell you. No, no, I haven't.</p> <p>8 Q. Okay, okay. All right. But you -- as you</p> <p>9 testified just a moment ago, you have known white and</p> <p>10 Hispanic special agents and/or troopers that have</p> <p>11 engaged in the same or similar conduct but were not</p> <p>12 disciplined, correct?</p> <p>13 MR. HARRIS: Object to the form of the</p> <p>14 question.</p> <p>15 Q. (BY MR. MUNGO) What you just testified to,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Correct?</p> <p>19 A. Yes, yes.</p> <p>20 Q. All right. All right. Did you ever address</p> <p>21 a situation -- did you ever address that situation, a</p> <p>22 similar situation, in terms of the conduct by</p> <p>23 Mr. McPherson, while under your supervision, that</p> <p>24 prompted you to have some sort of counseling with</p> <p>25 him?</p>	<p>60</p> <p>1 Q. What did Captain Schwartz want you to do to</p> <p>2 Mr. McPherson by way of discipline in addition to and</p> <p>3 beyond your verbal counseling?</p> <p>4 A. He wanted me to give him a written</p> <p>5 counseling, which is an HQ-31, which is --</p> <p>6 Q. Okay.</p> <p>7 A. -- a written counsel.</p> <p>8 Q. Okay, okay. And for the record while we're</p> <p>9 there, can you tell us the difference between a --</p> <p>10 you call it a HQ or HR-31?</p> <p>11 A. I mean HR, I'm sorry. HR-31.</p> <p>12 Q. HR. That's okay. And so tell us for the</p> <p>13 record, what is the difference between HR-31 and a</p> <p>14 C-1?</p> <p>15 A. An HR-31 is a written counseling that is</p> <p>16 placed in your personal file that you -- that</p> <p>17 personnel file is only there for a year and then</p> <p>18 it's -- then it's taken out of your personal file.</p> <p>19 As a C-1, well, that's a complaint. A</p> <p>20 complaint is an allegation, and that complaint is --</p> <p>21 can be four stages. Well, back then it was four</p> <p>22 stages. It would be sustained, not sustained,</p> <p>23 unfounded, or exonerated.</p> <p>24 So that's the difference between a</p> <p>25 written counseling and a complaint, which is a C-1.</p>
<p>59</p> <p>1 A. Yes.</p> <p>2 Q. And what was that occasion, sir?</p> <p>3 A. The occasion was a -- an evidence -- it was</p> <p>4 a cell phone in evidence that was taken out of</p> <p>5 evidence and was supposed to be given to a -- the</p> <p>6 rightful owner.</p> <p>7 Q. Okay, all right. And apparently that rose</p> <p>8 to the level of you, as Mr. McPherson's supervisor,</p> <p>9 addressing what you considered to be the matter not</p> <p>10 handled quite the way you would have wanted it to,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And as a result, you had a counseling</p> <p>14 with Mr. McPherson. Is that correct?</p> <p>15 A. Yes, I had a verbal counseling with</p> <p>16 Mr. McPherson.</p> <p>17 Q. Okay. And at the time of that verbal</p> <p>18 counseling, you told Mr. McPherson that that was the</p> <p>19 end of the matter, it wouldn't go any further,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. But there came an occasion in which</p> <p>23 Captain Schwartz wanted you to take it further,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p>61</p> <p>1 Q. Is there a difference between an HR-31 and a</p> <p>2 C-1 with regard to how long that is -- remains in</p> <p>3 Mr. McPherson's record?</p> <p>4 A. Yes.</p> <p>5 Q. Can you tell us in the record?</p> <p>6 A. Well, an HR-31 should just be placed in your</p> <p>7 -- in your personnel file for a year. A C-1, well,</p> <p>8 that is permanent in your personnel file.</p> <p>9 Q. And does a C-1 have any affect on a --</p> <p>10 Mr. McPherson -- and we're talking about</p> <p>11 Mr. McPherson -- Mr. McPherson's ability to be</p> <p>12 promoted or his chances at being promoted?</p> <p>13 A. It is looked upon, but if you can explain it</p> <p>14 at the oral board, it depends on the board members of</p> <p>15 certain situations and -- but it -- there is a big</p> <p>16 weigh in it for -- on promotional purposes. You just</p> <p>17 have to explain. Explain why you were complained on.</p> <p>18 And if you have -- usually it happens is there's a</p> <p>19 misunderstanding, and if you explain it on the oral</p> <p>20 board, well, you can -- it can be bypassed.</p> <p>21 Q. So it is an impediment to being promoted,</p> <p>22 correct?</p> <p>23 A. You can say that, yes.</p> <p>24 Q. Okay. It's certainly not -- it certainly</p> <p>25 doesn't enhance Mr. McPherson's chances of getting</p>

<p style="text-align: right;">62</p> <p>1 promoted, correct? Correct?</p> <p>2 A. No, no.</p> <p>3 Q. It detracts from that, correct? It detracts</p> <p>4 from his --</p> <p>5 A. Yes.</p> <p>6 Q. -- ability to be promoted, correct?</p> <p>7 A. Yes.</p> <p>8 Q. It also detracts from his ability to acquire</p> <p>9 career enhancing assignments, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So it's a negative thing, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what Captain Schwartz wanted you</p> <p>14 to do, after you told Mr. McPherson that a verbal</p> <p>15 counseling was sufficient which would have resulted</p> <p>16 in an HR-31, Captain Schwartz wanted you to pursue</p> <p>17 the course that would lead to a C-1, correct?</p> <p>18 MR. HARRIS: Object to the form of the</p> <p>19 question.</p> <p>20 A. Well, I wanted him to -- I mean, I did a</p> <p>21 verbal complaint -- I mean, a verbal counseling. I</p> <p>22 didn't want it to go any further than that.</p> <p>23 I was directed to give Agent McPherson a</p> <p>24 HR-31, which is a written complaint. I didn't agree</p> <p>25 with it. I didn't because I --</p>	<p style="text-align: right;">64</p> <p>1 complaint which would have -- could have resulted in</p> <p>2 a C-1, correct?</p> <p>3 MR. HARRIS: Objection. Calls for</p> <p>4 speculation.</p> <p>5 A. I can't -- I mean --</p> <p>6 Q. (BY MR. MUNGO) Do you understand my</p> <p>7 question? Do you understand I'm not -- I'm not</p> <p>8 asking you if that would have happened, sir. I'm</p> <p>9 asking you that a written complaint could result in a</p> <p>10 C-1.</p> <p>11 A. Yes, yes.</p> <p>12 Q. Okay. That's all I'm asking.</p> <p>13 A. It could.</p> <p>14 Q. All right. I know you're not a prophet</p> <p>15 and --</p> <p>16 A. Yeah. It --</p> <p>17 Q. -- and that's fine.</p> <p>18 A. It depends, you know, on the allegations.</p> <p>19 Q. I understand, I understand.</p> <p>20 A. Yeah.</p> <p>21 Q. But Captain Schwartz wanted you to pursue a</p> <p>22 written complaint, which would have resulted in a</p> <p>23 C-1, could have resulted in a C-1, whereas your</p> <p>24 verbal counseling ended at a HR-31, which only</p> <p>25 remained in his file for a year, correct?</p>
<p style="text-align: right;">63</p> <p>1 Q. (BY MR. MUNGO) Wait a minute. I'm --</p> <p>2 A. -- kind of -- I felt that --</p> <p>3 Q. -- I'm so sorry. I'm so sorry, I -- please</p> <p>4 -- please forgive me for -- but you said you were</p> <p>5 instructed to give Mr. McPherson a written complaint,</p> <p>6 which was an HR-31. You meant a C-1?</p> <p>7 A. No, no, no. A written complaint, a written</p> <p>8 complaint. Not a C-1.</p> <p>9 Q. Okay, okay. But does the written complaint</p> <p>10 ultimately lead to -- can lead to a C-1?</p> <p>11 A. It can lead to a C-1. Yes, it can later.</p> <p>12 Q. But it definitely is not an HR-31?</p> <p>13 A. No, it's not an HR-31.</p> <p>14 Q. It's more severe than an HR-31, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And an HR-31 does not result in a C-1,</p> <p>17 right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. But a written complaint can result in</p> <p>20 a C-1. Is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And had you written a written</p> <p>23 complaint, he would have been -- Mr. McPherson would</p> <p>24 have been investigated on that written complaint,</p> <p>25 which could have led to a sustaining of that</p>	<p style="text-align: right;">65</p> <p>1 A. Correct.</p> <p>2 Q. Okay. All right. And Captain Schwartz was</p> <p>3 adamant about you changing your HR-31 verbal</p> <p>4 counseling to a written complaint. He was adamant</p> <p>5 about that, correct?</p> <p>6 A. Okay.</p> <p>7 MR. HARRIS: Object to the form of the</p> <p>8 question.</p> <p>9 A. Okay, Mr. Mungo. A verbal complaint -- I</p> <p>10 mean a verbal -- a verbal warning or a verbal --</p> <p>11 Q. (BY MR. MUNGO) Counseling?</p> <p>12 A. -- is different from an HR-31. An HR-31 is</p> <p>13 a written -- a written reprimand, okay. A verbal is</p> <p>14 just we talk about it, and it is -- it's done and</p> <p>15 over with.</p> <p>16 Q. Got it. Thank you for that clarification.</p> <p>17 A. Okay. All right.</p> <p>18 Q. Thank you for that clarification. And so</p> <p>19 HR -- in fact, what you had dispensed in terms of</p> <p>20 dealing with that matter with Mr. McPherson on that</p> <p>21 property issue was even less serious than an HR-31,</p> <p>22 which would have remained in his file for only a</p> <p>23 year. And the verbal didn't go anywhere, it just</p> <p>24 stopped right there, correct?</p> <p>25 MR. HARRIS: Object to the form of the</p>

<p>66</p> <p>1 question.</p> <p>2 A. Correct, sir. It would have stopped right</p> <p>3 there.</p> <p>4 Q. (BY MR. MUNGO) Okay. Thank you. Thank you</p> <p>5 for that clarification. Appreciate that. Okay.</p> <p>6 So what Captain Schwartz wanted you to</p> <p>7 do was twice as severe as what you did with regard to</p> <p>8 handling that issue with regard to Mr. McPherson and</p> <p>9 that property, correct?</p> <p>10 MR. HARRIS: Object to the form of the</p> <p>11 question.</p> <p>12 Q. (BY MR. MUNGO) Wouldn't that be fair to</p> <p>13 say, it's twice as -- was twice as serious?</p> <p>14 A. It's a level up. Not twice. It's -- it</p> <p>15 would be a level up from just a verbal -- verbal</p> <p>16 counseling.</p> <p>17 Q. Well, a C-1 is actually -- well, a written</p> <p>18 complaint is a HR -- I see what you're saying, okay.</p> <p>19 Good enough. Thank you. Thank you for that</p> <p>20 clarification.</p> <p>21 How long after Mr. McPherson began to</p> <p>22 report to you as a special agent did that incident</p> <p>23 and event occur, one month, two months, three months?</p> <p>24 A. I believe it was -- if I have my dates</p> <p>25 right, it is probably -- let me see. He was probably</p>	<p>68</p> <p>1 Q. Okay. And did he put -- did he instruct you</p> <p>2 to do that with the other agents as well, the white</p> <p>3 agents?</p> <p>4 A. He instructed me in -- with Greg and</p> <p>5 sometimes Boyett. Not as much as with McPherson, but</p> <p>6 with them, yes.</p> <p>7 Q. Okay. So how often did Captain Schwartz</p> <p>8 request that you monitor the weekly reports and</p> <p>9 investigatory reports of those two white agents that</p> <p>10 you just mentioned?</p> <p>11 A. Let's say a handful of times. That I</p> <p>12 recall, a handful of times.</p> <p>13 Q. Okay.</p> <p>14 A. It was -- it was questioned.</p> <p>15 Q. Okay. So -- but Mr. McPherson -- it is</p> <p>16 clear that Captain Schwartz placed emphasis on you</p> <p>17 monitoring Mr. McPherson's weekly reports and</p> <p>18 investigatory reports, correct?</p> <p>19 MR. HARRIS: Objection to the form of</p> <p>20 the question.</p> <p>21 Q. (BY MR. MUNGO) Correct?</p> <p>22 A. It was more of a concerning factor because</p> <p>23 of how he -- of how Captain Schwartz wanted the</p> <p>24 reports written.</p> <p>25 I did not agree to some of those</p>
<p>67</p> <p>1 five months after, five or six months, because I</p> <p>2 believe that the -- I verbal -- verbal counseling was</p> <p>3 in October, and -- in first of October, and the HR-31</p> <p>4 was in November of 2018, if I have my dates correct.</p> <p>5 Q. I understand, I understand. There was also</p> <p>6 an issue -- I want to move on to the next point, that</p> <p>7 there was also an issue with regard that Mr. --</p> <p>8 that Captain Schwartz had with Mr. McPherson on his</p> <p>9 weekly reports and investigatory reports, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And Mr. Schwartz [sic] asked you to</p> <p>12 scrutinize Mr. McPherson on his weekly reports and</p> <p>13 his investigative -- investigative reports. Isn't</p> <p>14 that correct?</p> <p>15 A. He advised for be more detailed, not to --</p> <p>16 to be more detailed in the investigative reports and</p> <p>17 in the weekly reports.</p> <p>18 Q. That was for -- that was the instruction for</p> <p>19 Mr. McPherson, correct?</p> <p>20 A. Correct.</p> <p>21 Q. But my question is Captain Schwartz had</p> <p>22 specifically instructed you to pay close attention to</p> <p>23 Mr. McPherson's weekly reports and investigatory</p> <p>24 reports, correct?</p> <p>25 A. Correct.</p>	<p>69</p> <p>1 suggestions, and I wouldn't -- I, myself, would</p> <p>2 promote those reports, and then I would -- I would</p> <p>3 have them kicked back for rework because he wanted --</p> <p>4 because Captain Schwartz wanted them in a different</p> <p>5 -- different -- not language but different wording.</p> <p>6 And to me, it sounded the same. I didn't -- I did</p> <p>7 not agree with, but him being my supervisor, at the</p> <p>8 end of the day, I would have -- at the end of the</p> <p>9 day, I would acknowledge that to Jari.</p> <p>10 Q. How frequently did he reject and kick back</p> <p>11 Mr. McPherson's weekly reports and investigatory</p> <p>12 reports?</p> <p>13 MR. HARRIS: Object to the form of the</p> <p>14 question.</p> <p>15 Q. (BY MR. MUNGO) If you want to surmise it --</p> <p>16 A. Some of the times.</p> <p>17 Q. I'm sorry?</p> <p>18 A. Some of the times.</p> <p>19 Q. Some of the times. Okay.</p> <p>20 A. Yeah.</p> <p>21 Q. But he would -- but he would reject</p> <p>22 Mr. McPherson's more than he rejected the other</p> <p>23 agents' reports, correct?</p> <p>24 MR. HARRIS: Object to the form of the</p> <p>25 question.</p>

<p>70</p> <p>1 Q. (BY MR. MUNGO) Correct?</p> <p>2 A. It was -- it was concerning on his part, but</p> <p>3 again, I was just perfectly -- I did not agree. I</p> <p>4 didn't. And -- but he was also very, very adamant</p> <p>5 with -- with the other reports as well.</p> <p>6 Q. Okay. But he didn't kick the other agents'</p> <p>7 reports back as frequently as he kicked Mr. McPherson's</p> <p>8 reports back, correct?</p> <p>9 A. Not during the time, no.</p> <p>10 Q. Okay. Was there ever a time that that</p> <p>11 happened, that he kicked back the white agents'</p> <p>12 reports as frequently as he kicked back McPherson's</p> <p>13 reports?</p> <p>14 A. Yes, there was a couple of times.</p> <p>15 Q. A couple of times?</p> <p>16 A. Yes.</p> <p>17 Q. Out of numerous times there were a couple of</p> <p>18 times, right?</p> <p>19 MR. HARRIS: Object to the form of the</p> <p>20 question.</p> <p>21 Q. (BY MR. MUNGO) So is it fair to say that</p> <p>22 Mr. McPherson's reports were rejected more frequently</p> <p>23 than the white agents' reports?</p> <p>24 MR. HARRIS: Object to the form of the</p> <p>25 question.</p>	<p>72</p> <p>1 activities are going to be different from somebody</p> <p>2 else's.</p> <p>3 A. Yes.</p> <p>4 Q. I'm talking about the kind of concerns that</p> <p>5 Schwartz had with McPherson's report, McPherson</p> <p>6 corrected it by following the same model of the white</p> <p>7 agent's report, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Fair to say, okay. And still,</p> <p>10 Captain Schwartz rejected Mr. McPherson's report,</p> <p>11 correct?</p> <p>12 A. Yes, I believe that it was more -- it was</p> <p>13 more of my idea of I'm going to push this forward,</p> <p>14 and I didn't agree with his rejection.</p> <p>15 Q. Okay.</p> <p>16 A. And I just pushed it forward.</p> <p>17 Q. Okay.</p> <p>18 A. And because I felt that that reports -- or</p> <p>19 those reports were adequate.</p> <p>20 Q. Okay.</p> <p>21 A. And I did that because I didn't agree.</p> <p>22 Q. Okay. So then the same style and the same</p> <p>23 format and the same phraseology and the things that</p> <p>24 was followed by this white trooper whose report</p> <p>25 wasn't rejected, Mr. McPherson followed that format,</p>
<p>71</p> <p>1 Q. (BY MR. MUNGO) Would that be -- would that</p> <p>2 be fair to say?</p> <p>3 A. I could say yes.</p> <p>4 Q. Okay. And wasn't there an occasion in which</p> <p>5 you actually asked Mr. McPherson to kind of mimic the</p> <p>6 way a white agent wrote his report, and McPherson did</p> <p>7 that, and when Mr. McPherson submitted his report,</p> <p>8 Captain Schwartz rejected it? Isn't that true?</p> <p>9 A. Yes. Yes, I do recall.</p> <p>10 Q. Okay. But Captain -- as far as you know,</p> <p>11 Captain Schwartz didn't reject the report that the</p> <p>12 white agent -- that Mr. -- didn't reject the white</p> <p>13 agent's report that Mr. McPherson mimicked or copied</p> <p>14 so to speak, correct?</p> <p>15 A. Well, he didn't actually copy it. He just</p> <p>16 -- he just mimicked.</p> <p>17 Q. No, that's what -- I know, that was a bad --</p> <p>18 that was a bad --</p> <p>19 A. Yeah. Yeah, yeah. No, don't -- we don't</p> <p>20 copy reports.</p> <p>21 Q. That was bad. I know. Look, let me -- let</p> <p>22 me do that again, okay, because that's not what I</p> <p>23 meant, right?</p> <p>24 A. Okay.</p> <p>25 Q. Because obviously -- obviously McPherson's</p>	<p>73</p> <p>1 that phraseology, and Mr. Schwartz -- and Captain</p> <p>2 Schwartz rejected his. Isn't that true? That's</p> <p>3 correct, right? I did get that right?</p> <p>4 A. Yes, yes.</p> <p>5 Q. Okay. All right. In fact, wasn't there a</p> <p>6 time that you had given Mr. McPherson an evaluation</p> <p>7 and Captain Schwartz forced you to change it?</p> <p>8 A. Yes, he forced me -- well, he directed me to</p> <p>9 change McPherson's and the other agents.</p> <p>10 Q. Yeah, not forced you. You're not a man to</p> <p>11 be toyed with like that. But he insisted that you</p> <p>12 change your evaluation of Mr. McPherson, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Your evaluation was more positive at the</p> <p>15 time Captain Schwartz saw it, correct?</p> <p>16 A. Yes, I felt that he had -- was adequate</p> <p>17 enough for an agent of his tenure to --</p> <p>18 Q. Okay.</p> <p>19 A. -- to get that evaluation that I had.</p> <p>20 Q. Okay.</p> <p>21 A. That I did.</p> <p>22 Q. Yes, sir. And Captain Schwartz wanted you</p> <p>23 to mark him down, mark Mr. McPherson down in your</p> <p>24 evaluation, correct?</p> <p>25 A. On some categories, yes.</p>

<p style="text-align: right;">74</p> <p>1 Q. But overall it was a mark down, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you disagreed with that, as you</p> <p>4 just said you didn't agree with that?</p> <p>5 A. Exactly.</p> <p>6 MR. HARRIS: Object to the form of the</p> <p>7 question.</p> <p>8 A. And as well I didn't agree with the -- with</p> <p>9 the other -- the others that -- evaluations and mine</p> <p>10 as well, so.</p> <p>11 Q. (BY MR. MUNGO) Okay. All right. So far</p> <p>12 you've mentioned the -- well, I'll hold that question</p> <p>13 until a little later.</p> <p>14 The next question that I have for you is</p> <p>15 that Mr. McPherson was denied training by Captain</p> <p>16 Schwartz, correct, to attend the FBI-LEEDA classes in</p> <p>17 Georgetown? Do you recall that?</p> <p>18 MR. HARRIS: Object to the form of the</p> <p>19 question.</p> <p>20 A. He was not denied. He was -- at first he --</p> <p>21 I'm -- let me rephrase that. He was already in the</p> <p>22 FBI-LEEDA when he was in RSD when he transferred to</p> <p>23 CID. Captain Schwartz's thoughts were that CID had</p> <p>24 to pay for those -- for those classes, and they were</p> <p>25 already under -- I mean, they were already paid for</p>	<p style="text-align: right;">76</p> <p>1 CID unit, at the time this issue of the training</p> <p>2 surfaced, roughly?</p> <p>3 A. Probably about three or four months. Let's</p> <p>4 say that.</p> <p>5 Q. Three or four months?</p> <p>6 A. Yeah, three or four months. Because --</p> <p>7 because he came in -- yeah. Yes, I can say three or</p> <p>8 four months.</p> <p>9 Q. Okay, okay. Had the other agents, the white</p> <p>10 agents, attended this training -- or any of them</p> <p>11 attended the FBI LEEDA training?</p> <p>12 A. No.</p> <p>13 Q. None of them had attended the training?</p> <p>14 A. No.</p> <p>15 Q. Okay. Did any of them attend training</p> <p>16 subsequent to the issue when it surfaced regarding</p> <p>17 Mr. McPherson attending?</p> <p>18 A. Not the FBI training.</p> <p>19 Q. Okay. Was Mr. McPherson denied any other</p> <p>20 training by Mr. Schwartz that you can recollect?</p> <p>21 A. That I recall -- I can't recall.</p> <p>22 Q. Okay. Fair enough.</p> <p>23 MR. HARRIS: It's about 12:30 now. Can</p> <p>24 we just at least go off the record to discuss lunch</p> <p>25 plans?</p>
<p style="text-align: right;">75</p> <p>1 by RSD. So --</p> <p>2 Q. (BY MR. MUNGO) So why did -- so why did</p> <p>3 Captain Schwartz have problems with Mr. McPherson</p> <p>4 attending that LEEDA FBI class?</p> <p>5 A. I believe that he was trying to save CID</p> <p>6 money budget at the time. But --</p> <p>7 Q. But wasn't it -- I'm sorry.</p> <p>8 A. I'm sorry. Go ahead. Go ahead, sir.</p> <p>9 Q. But wasn't it clear at that moment in time</p> <p>10 that the class was already paid for?</p> <p>11 A. At the time it wasn't. I had to call and</p> <p>12 verify that the class was paid for and was already --</p> <p>13 Mr. McPherson was already registered for that class.</p> <p>14 Q. Okay. And was it appropriate to insist that</p> <p>15 the unit that Mr. McPherson came from be responsible</p> <p>16 for paying for that training?</p> <p>17 A. I cannot -- I cannot answer that. I don't</p> <p>18 know.</p> <p>19 Q. You don't know. That --</p> <p>20 A. That's -- that's a budget --</p> <p>21 Q. That's fair.</p> <p>22 A. -- budgetary issue. I can't answer that,</p> <p>23 Mr. Mungo.</p> <p>24 Q. That's fair enough. That's fair enough.</p> <p>25 How long had Mr. McPherson been in your unit, your</p>	<p style="text-align: right;">77</p> <p>1 MR. MUNGO: Okay. I've got one more</p> <p>2 question before we do. Can we do that, just one more</p> <p>3 question?</p> <p>4 MR. HARRIS: Sure.</p> <p>5 MR. MUNGO: Okay. Thanks.</p> <p>6 Q. (BY MR. MUNGO) There came a time in which</p> <p>7 Captain Schwartz had brought up the subject of</p> <p>8 placing a tracking device on Mr. McPherson's vehicle,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And you disagreed with that, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And, in fact, you made it known to</p> <p>14 Captain Schwartz in so many ways that you disagreed</p> <p>15 with that, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And can you explore the details of</p> <p>18 how that conversation -- how the subject first came</p> <p>19 up and how it unfolded and the result?</p> <p>20 A. The conversation came up in regards to</p> <p>21 monitoring him. He did suggest that -- "he" being</p> <p>22 Captain Schwartz, suggest that if he had to that it</p> <p>23 would have to be placed a tracker.</p> <p>24 I advised Captain Schwartz that it was</p> <p>25 against policy to do that, that I didn't agree, and</p>

<p style="text-align: right;">78</p> <p>1 I'm not going to do that to one of my agents at the 2 time. Even if it was -- you know, he was using it 3 for other purposes. I would rather him -- "him" 4 being my agent -- to tell me, you know, his honesty, 5 his integrity on why he was using it, you know, other 6 than criminal investigations. And I totally 7 disagreed with that. 8 Q. Had Captain Schwartz ever asked you to place 9 or discuss the possibility of placing a tracking 10 device on the vehicles of any of the white agents 11 that reported to you? 12 A. No. 13 Q. Okay. All right, all right. So -- 14 MR. MUNGO: And Drew, I know I told you 15 that was my last question. This is the very last one 16 here and we can talk lunch. 17 Q. (BY MR. MUNGO) So far we went through a 18 series of events in terms of your supervising 19 Mr. McPherson and dealing with different issues that 20 came up, some that involved verbal counseling, some 21 involved investigations, some involved a training, 22 weekly reports, etcetera. 23 In most of these -- in most of these 24 occasions, Captain Schwartz was involved in 25 addressing Mr. McPherson on those points, correct?</p>	<p style="text-align: right;">80</p> <p>1 A. Well, if I recall, the C-1 was for taking 2 his child -- using the vehicle to take his child 3 to -- I mean, for having his child in the vehicle. I 4 think that was the C-1 that was sustained. 5 Q. (BY MR. MUNGO) Fair enough, fair enough. 6 And for that incident, you did not file a written 7 complaint on Mr. McPherson, did you? 8 A. No, no. 9 Q. And how did you handle that with 10 Mr. McPherson when you learned that Mr. McPherson had 11 to pick his child up from school at a time in which 12 she was questionably vulnerable? 13 A. I spoke with Mr. McPherson. I asked him 14 about the situation, and he did say that he had 15 picked her up. And to me, if -- family is first. 16 And I would have done the same thing. 17 Q. And so you did not take any action against 18 Mr. McPherson for picking his daughter up, correct? 19 A. No, I didn't. 20 Q. But -- 21 A. I instructed him that -- you know, that, you 22 know, he shouldn't be doing that but I understand. 23 Q. All right. But Captain Schwartz forced the 24 issue, and it resulted in a C-1 against Mr. McPherson 25 which now remains in his file throughout his career,</p>
<p style="text-align: right;">79</p> <p>1 A. Correct. 2 Q. Okay. And on most of these points, there 3 was a series of these issues that came up that you 4 disagree with Mr. Schwartz on how Mr. McPherson would 5 be handled in relationship to those issues. Isn't 6 that correct? 7 A. Correct. 8 Q. Okay. And how long after these sequence of 9 events in which you disagree with Mr. Schwartz on his 10 treatment of Mr. McPherson were you demoted? 11 A. Let me see. If I -- if I can recollect, 12 probably after Mr. McPherson got his C-1, and it was 13 somewhat sustained, and I totally disagreed with what 14 Schwartz was doing at -- you know, during those -- 15 during that time span. Probably about nine -- let me 16 see. January -- eight months afterwards. 17 Q. So, you know -- 18 A. Eight -- eight to ten. 19 Q. Thank you. So then the C-1 that you just 20 mentioned that Mr. McPherson received shortly before 21 you were demoted, resulted from Captain Schwartz 22 insisting that you do a written complaint against 23 Mr. McPherson on the phone property issue, correct? 24 MR. HARRIS: Objection. Calls for 25 speculation.</p>	<p style="text-align: right;">81</p> <p>1 correct? 2 A. I believe so, yes. 3 Q. Okay. But you do know that it was Schwartz 4 who pushed the disciplinary action against 5 Mr. McPherson for picking his daughter up, correct? 6 MR. HARRIS: Objection. Calls for 7 speculation. 8 A. Yeah. Yes, I would assume, yes. 9 Q. (BY MR. MUNGO) Okay. So then you know that 10 -- did Mr. McPherson explain to you the circumstances 11 under which he picked his daughter up? 12 A. Yes, he did. I can't recall the whole -- 13 the whole situation because I didn't -- I mean, I 14 would have done the same, I mean, in an emergency 15 situation. But I cannot recall the exact 16 conversation that -- that we had in pertaining to the 17 -- him picking up his daughter. 18 Q. But was your recollection -- generally was 19 it that it was the kind of situation where it was 20 important and urgent that he pick his child up? 21 A. Yes, I took his word for it. 22 Q. Okay. What did -- oh, you don't recall what 23 he said. Okay. Very good. 24 MR. MUNGO: We can talk lunch now. 25 MR. HARRIS: Off the record?</p>

<p style="text-align: right;">82</p> <p>1 THE REPORTER: Yes. Off the record at 2 12:37. 3 (Recess 12:37 p.m. to 1:42 p.m.) 4 THE REPORTER: Back on the record at 5 1:42. 6 MR. MUNGO: Thank you very much. 7 Q. (BY MR. MUNGO) Okay. So I have a series of 8 questions that's not going to take long at all to get 9 through here. I don't know what happened to my other 10 glasses. I guess I've got to use the -- some 11 substitutes here, okay. 12 So, Mr. Holguin, were you ever told at 13 any time that Mr. McPherson could not assist another 14 special agent with a wire due to him possibly being 15 terminated? 16 A. That I recall -- I don't recall. Can -- 17 Q. Because some -- of some sort of disciplinary 18 action was pending and he -- the possibility he may 19 not be employed and his contribution may not be 20 useful? That doesn't help refresh your recollection? 21 MR. HARRIS: Object to form -- 22 A. Yes, I recall. 23 MR. HARRIS: -- of the question. 24 A. Yes. Yes, I recall. 25 Q. (BY MR. MUNGO) Okay. Can you tell us about</p>	<p style="text-align: right;">84</p> <p>1 A. I don't recall, no. 2 Q. (BY MR. MUNGO) Okay. Is that a little 3 unusual, though? Does that make sense, that -- that 4 particular reason? I know you said there was also 5 some reports that needed to be done, but -- by the 6 way were they Mr. McPherson's reports? 7 A. Yes. 8 MR. HARRIS: Object to the form of the 9 question -- 10 A. Yes. 11 MR. HARRIS: -- because there was 12 several questions there. 13 Q. Well -- 14 A. Yes, to the reports. 15 MR. MUNGO: Madam Court Reporter, did 16 you get the answer? 17 THE REPORTER: Yes. 18 A. Yes, to the reports. 19 Q. (BY MR. MUNGO) Okay. Those were 20 Mr. McPherson's reports? 21 A. Yes. 22 Q. Okay. So was anything unique about those 23 reports that would trigger and justify him not 24 participating in a -- in this particular wire 25 investigation?</p>
<p style="text-align: right;">83</p> <p>1 that occasion, sir? 2 A. I do believe that there was a situation 3 where one of -- Greg Lanford was on a wire. It was 4 his case. And I was instructed -- I was instructed 5 by Captain Schwartz that McPherson -- for him not to 6 -- not to partake in the investigation surveillancing 7 and also because there were some reports that needed 8 to be done as well. 9 So it was a combination of -- of two, 10 but he did direct him to -- directed me to not have 11 Jari partake in the surveillance. 12 Q. For reasons that Jari may not be around to 13 support his input into the investigation? I'm 14 specifically interested in you addressing that 15 component of what was told you by Schwartz. 16 A. I cannot recall the exact words about that, 17 if it was. 18 Q. Okay, all right. Have you ever known the 19 agency to ever preclude or exclude an agent or a 20 trooper from participating in an investigation 21 because they may not be around as a result of some 22 potential disciplinary action? 23 MR. HARRIS: Objection to form. 24 MR. MUNGO: I knew you were going to say 25 that.</p>	<p style="text-align: right;">85</p> <p>1 MR. HARRIS: Object to the form of the 2 question. 3 A. Not that I recall. 4 Q. (BY MR. MUNGO) So can you describe to us 5 the state of these reports and the circumstances 6 under which these reports existed that needed to be 7 completed? 8 A. I can't recall on those. I can't recall. 9 Q. So nothing stands out in your mind to make 10 those reports so urgent that he couldn't participate 11 in doing the work of a criminal investigation, 12 correct? 13 A. Correct. 14 Q. Okay. So at any point in time, all of the 15 special agents had reports that they hadn't completed 16 to some degree or another. Isn't that fair to say? 17 A. Yes. 18 Q. So why was McPherson singled out in this 19 instance that he couldn't participate in the work 20 that he was hired to do as a special agent because of 21 those reports? Anything in your mind that would make 22 sense? 23 MR. HARRIS: Objection. Calls for 24 speculation. 25 A. I can't speculate on that.</p>

<p style="text-align: right;">86</p> <p>1 Q. (BY MR. MUNGO) No, no. No, no. Don't --</p> <p>2 I'm so sorry. And maybe the question was not as</p> <p>3 artfully posed to you, Mr. Holguin, okay. And I take</p> <p>4 -- that's my bad.</p> <p>5 But my question is is there anything</p> <p>6 that stands out in your mind that would make those --</p> <p>7 the first question would be that would make those</p> <p>8 particular reports so urgent that Mr. McPherson could</p> <p>9 not and should not participate in a criminal</p> <p>10 investigation that he was, as a special agent, hired</p> <p>11 to do?</p> <p>12 A. No.</p> <p>13 Q. Okay. All right, all right. And the other</p> <p>14 question was -- and I think you answered yes to this,</p> <p>15 I believe, but just correct me. I'm -- I'm not</p> <p>16 sure -- that all of the agents to a lesser or greater</p> <p>17 degree always had reports that needed to be completed</p> <p>18 that were not completed during their workday,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And that they went on doing other</p> <p>22 duties separate and apart from -- different from</p> <p>23 completing those reports during that workday,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">88</p> <p>1 advise Mr. McPherson that it was -- I should have --</p> <p>2 I should have stood up more as a supervisor. Being</p> <p>3 in a supervisor leadership place, this is -- this is</p> <p>4 -- my opinion on that is that you need to take care</p> <p>5 of your -- your constituents and, you know, stand up</p> <p>6 for them.</p> <p>7 And I believe that I miss -- I missed</p> <p>8 that, and I should have. I should have -- I should</p> <p>9 have stood up in those other -- in regards to the</p> <p>10 HR-31 and stuff like that. But that's -- that's my</p> <p>11 opinion on the leadership. And, yes, we did, we did</p> <p>12 shed tears.</p> <p>13 Q. Did you believe that both you and</p> <p>14 Mr. McPherson were being discriminated against and/or</p> <p>15 retaliated against because of your race and/or</p> <p>16 because of your protesting being treated in a</p> <p>17 discriminatory fashion?</p> <p>18 MR. HARRIS: Object to the form of the</p> <p>19 question.</p> <p>20 A. At the time, sir, I was emotional and I</p> <p>21 did -- I did believe.</p> <p>22 Q. (BY MR. MUNGO) Okay. Did you have reason</p> <p>23 subsequent to that time to believe otherwise?</p> <p>24 A. The way I was treated there in Temple, after</p> <p>25 the fact, after a year or so that I was -- I was, but</p>
<p style="text-align: right;">87</p> <p>1 Q. Okay. So -- and I guess the question was</p> <p>2 then, and your answer was, you didn't want to</p> <p>3 speculate. Well, I don't want you to either, sir,</p> <p>4 but I'm asking you what you know.</p> <p>5 Was there anything outstanding about</p> <p>6 those reports, so outstanding about those reports</p> <p>7 that Schwartz wanted or prevented McPherson from</p> <p>8 participating in that wire criminal investigation</p> <p>9 that would take precedence over him participating in</p> <p>10 that wire criminal investigation?</p> <p>11 A. No.</p> <p>12 Q. Okay. Nothing. Okay, all right.</p> <p>13 Did Mr. Schwartz ever preclude any of</p> <p>14 the white special agents from engaging in their work</p> <p>15 as special agents, prevent them from going into the</p> <p>16 field or disengaging in their work as special agents</p> <p>17 and sent them to complete their reports?</p> <p>18 A. No.</p> <p>19 Q. Okay. At any time did you and Mr. McPherson</p> <p>20 shed tears over the way that you -- that the both of</p> <p>21 you were being treated by Schwartz?</p> <p>22 A. Yes. Yes, we did.</p> <p>23 Q. Can you tell us just a little bit about that</p> <p>24 occasion?</p> <p>25 A. Well, I was emotional at the time. I did</p>	<p style="text-align: right;">89</p> <p>1 that is -- that is my case. And I did believe</p> <p>2 towards myself, yes.</p> <p>3 Q. Okay. What about towards Mr. McPherson,</p> <p>4 that he was being discriminated against because of</p> <p>5 his race?</p> <p>6 MR. HARRIS: Objection -- object to the</p> <p>7 form of the question.</p> <p>8 A. At the time that's my opinion. And, yes, he</p> <p>9 was. But I cannot speculate because I'm not a mind</p> <p>10 reader with what is going through Captain Schwartz's</p> <p>11 -- and I didn't agree with what was happening and,</p> <p>12 again, it's -- I should have done something about it.</p> <p>13 Q. (BY MR. MUNGO) I understand. Because you</p> <p>14 believed that Mr. McPherson was being treated less</p> <p>15 favorably than his white similarly-situated</p> <p>16 coworkers?</p> <p>17 MR. HARRIS: Object to the form of the</p> <p>18 question.</p> <p>19 A. At that time.</p> <p>20 Q. (BY MR. MUNGO) Were you told by Captain</p> <p>21 Schwartz that Mr. McPherson was going to be demoted</p> <p>22 or terminated at any time?</p> <p>23 A. I can't recall the exact words that Schwartz</p> <p>24 advised, but -- I can't recall. I'm trying.</p> <p>25 Q. So did he use words to that effect that</p>

<p>90</p> <p>1 caused you to believe that that's what he meant?</p> <p>2 A. Not to me. No, not directly to me.</p> <p>3 Q. Okay. To who then?</p> <p>4 A. I don't know. But when I was present, it</p> <p>5 wasn't directed -- I mean, it wasn't when we were --</p> <p>6 when we were together.</p> <p>7 Q. Did you ever learn that Schwartz had made</p> <p>8 such a statement regarding Mr. McPherson through</p> <p>9 anyone, through any source?</p> <p>10 A. I don't recall that.</p> <p>11 Q. Okay. Did Mr. McPherson -- do you recall</p> <p>12 Mr. McPherson putting in for the position of sex</p> <p>13 offender compliance?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you approved it, didn't you?</p> <p>16 A. Yes, I advised that I would highly recommend</p> <p>17 him for that position.</p> <p>18 Q. But Schwartz denied it, his opportunity to</p> <p>19 do same, correct?</p> <p>20 A. At the time, yes.</p> <p>21 Q. Was there another time that Mr. McPherson</p> <p>22 sought that position and Mr. Schwartz didn't oppose</p> <p>23 it?</p> <p>24 A. Not that I recall, no.</p> <p>25 Q. Okay. Did the department allow you to drive</p>	<p>92</p> <p>1 Q. Okay. Mr. Holguin, do you know why</p> <p>2 Mr. McPherson transferred from Temple to Austin?</p> <p>3 MR. HARRIS: Objection. Calls for</p> <p>4 speculation.</p> <p>5 A. No. I mean, he -- it was a better position</p> <p>6 for him there -- there in Austin. He's -- he</p> <p>7 transferred from RSD, so I kind of figured he wanted</p> <p>8 to get back.</p> <p>9 Q. (BY MR. MUNGO) Did he ever tell you -- did</p> <p>10 Mr. McPherson tell you why? At one point he told</p> <p>11 you, at least on one occasion he explained to you</p> <p>12 why?</p> <p>13 A. That I recall, he just -- he just wanted to</p> <p>14 leave the Temple area. It wasn't fit for him. Yes,</p> <p>15 he did.</p> <p>16 Q. And he told you why, too. He gave you a</p> <p>17 reason why he felt it wasn't fit for him, didn't he?</p> <p>18 A. Yes, he did. Yes, he did.</p> <p>19 Q. And what did he -- what did he say?</p> <p>20 A. I can't recall the exact words.</p> <p>21 Q. Well, not the exact words but you got the</p> <p>22 effect of why he wanted to leave, right?</p> <p>23 A. Yes, yes. He felt that he was being singled</p> <p>24 out, and he was in a work environment that was</p> <p>25 inadequate for him, yes.</p>
<p>91</p> <p>1 from Temple to Austin every day once you were</p> <p>2 demoted?</p> <p>3 MR. HARRIS: Object to the form of the</p> <p>4 question.</p> <p>5 A. Yes, they did.</p> <p>6 Q. (BY MR. MUNGO) About how many miles was --</p> <p>7 was that, one way?</p> <p>8 A. Gosh.</p> <p>9 Q. Or approximately, if you -- or you can ask</p> <p>10 Siri. I'm sorry.</p> <p>11 A. I know, I can -- I can probably check.</p> <p>12 Probably 70 miles or more. I don't know. I couldn't</p> <p>13 tell you.</p> <p>14 Q. Okay. And that was between -- well, it was</p> <p>15 more than 50, right?</p> <p>16 A. Yes, it was. It was more than 50 straight</p> <p>17 -- actual miles.</p> <p>18 Q. Okay. And about how long of a period of</p> <p>19 time did that drive take place?</p> <p>20 A. Okay. I was demoted in two thou -- in</p> <p>21 November 2019. About a year.</p> <p>22 Q. That -- do you recall the year?</p> <p>23 A. 2019 to 2020. Well, actually less than</p> <p>24 that. No, I'm sorry, let me see. November, 2020.</p> <p>25 About ten months.</p>	<p>93</p> <p>1 Q. Okay. And he believed that his race was</p> <p>2 part of the reason for his troubles, correct?</p> <p>3 A. That I recall, yes.</p> <p>4 Q. Okay. Mr. Holguin, are there any -- is --</p> <p>5 are there any documentation that you may have with</p> <p>6 regard to Schwartz -- Captain Schwartz directing you</p> <p>7 to monitor Mr. McPherson?</p> <p>8 A. I do have a -- requesting the gas receipts.</p> <p>9 Q. Okay. And that -- is that in the form of an</p> <p>10 email or a memo?</p> <p>11 A. Email.</p> <p>12 Q. Email. Do you have that with you today?</p> <p>13 A. No, I don't.</p> <p>14 Q. Okay. Can you -- can you provide that to</p> <p>15 counsel?</p> <p>16 A. Sure, yes.</p> <p>17 Q. Okay.</p> <p>18 MR. MUNGO: Counsel, is it okay, you</p> <p>19 could receive that for us and -- and supplement?</p> <p>20 MR. HARRIS: Sure.</p> <p>21 MR. MUNGO: Thank you.</p> <p>22 Q. (BY MR. MUNGO) Are there any other</p> <p>23 documentation that you may possess, sir, that</p> <p>24 evidences the request and/or involvement of Schwartz</p> <p>25 in your monitoring Mr. McPherson?</p>

<p>122</p> <p>1 them from doing what is required for them for the 2 advancement of themselves. You are preventing them 3 from doing what they should be doing, in other words, 4 to improve themselves. 5 Q. Thank you, sir. So Counsel asked you if you 6 had evidence of using the N word or other derogatory 7 terms to express discriminatory intent. That's what 8 we call direct evidence. But you just described 9 another form evidence of proving discriminatory 10 intent, correct? 11 A. Yes. 12 Q. Okay. Is that the basis upon which you 13 derive that your conclusion and your thinking and 14 your opinion that race and retaliation was a basis 15 for your demotion and the ill treatment of 16 Mr. McPherson? 17 MR. HARRIS: Object to the form of the 18 question. 19 A. For my demotion, yes, and the treatment of 20 McPherson, yes. 21 Q. (BY MR. MUNGO) Thank you. I have nothing 22 further. 23 MR. HARRIS: All right. Nothing further 24 at this time. 25 MR. MUNGO: Thank you, sir. All right.</p>	<p>124</p> <p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: OSCAR HOLGUIN 3 DATE OF DEPOSITION: NOVEMBER 15, 2022 4 PAGE LINE CHANGE REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>
<p>123</p> <p>1 Madam, we do -- well, okay. You're our court 2 reporter. We'll make arrangements to get the 3 transcript. 4 THE REPORTER: Okay. Mr. Harris, do you 5 want a copy of the transcript? 6 MR. HARRIS: Yes, please. Can I get 7 one -- a copy to read and sign, a copy for the 8 witness to read and sign, 123 of transcript but I 9 would also like a pdf miniscript. Just one pdf 10 miniscript. 11 THE REPORTER: All right. 12 (Deposition concluded at 2:47 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>125</p> <p>1 I, OSCAR HOLGUIN, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above. 4 5 _____ 6 OSCAR HOLGUIN 7 8 THE STATE OF _____) 9 COUNTY OF _____) 10 Before me, _____, on this day 11 personally appeared OSCAR HOLGUIN, known to me (or 12 proved to me under oath or through _____) 13 (description of identity card or other document) to 14 be the person whose name is subscribed to the 15 foregoing instrument and acknowledged to me that he 16 executed the same for the purposes and consideration 17 therein expressed. 18 19 Given under my hand and seal of office, this 20 _____ day of _____, _____. 21 22 _____ 23 NOTARY PUBLIC IN AND FOR 24 25 THE STATE OF _____ 26 My commission expires: _____ 27 ____ No Changes Made ____ Amendment Sheet(s) Attached</p>

<p>126</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS 2 AUSTIN DIVISION 3 JARI MCPHERSON, JERALD) SAMS, AND DANIEL MARTINEZ,) 4) Plaintiffs,) 5) CIVIL ACTION VS.) 6) NO.: 1:20-cv-01223-DAE TEXAS DEPARTMENT OF PUBLIC) 7 SAFETY,)) 8 Defendant.) 9 REPORTER'S CERTIFICATION OF THE REMOTE ORAL DEPOSITION OF OSCAR HOLGUIN 10 NOVEMBER 15, 2022 11 I, Vanessa J. Theisen, a Certified 12 Shorthand Reporter in and for the State of Texas, 13 hereby certify to the following: 14 That the witness, OSCAR HOLGUIN, was duly 15 sworn by the officer and that the transcript of the 16 oral deposition is a true record of the testimony 17 given by the witness; 18 That the original deposition was delivered 19 to Mr. Drew Harris to obtain witness's signature.. 20 That a copy of this certificate was served 21 on all parties and/or the witness shown herein on 22 December 5th, 2022. 23 24 I further certify that pursuant to FRCP 25 Rule 30(3) that the signature of the deponent:</p>	
<p>127</p> <p>1 __XX_ was requested by the deponent or a 2 party before the completion of the deposition and 3 that the signature is to be before any notary public 4 and returned within 30 days from date of receipt of 5 the transcript. 6 If returned, the attached Changes and 7 Signature Page contains any changes and the reasons 8 therefore: 9 ____ was not requested by the deponent or 10 a party before the completion of the deposition. 11 I further certify that I am neither 12 counsel for, related to, nor employed by any of the 13 parties or attorneys in the action in which this 14 proceeding was taken, and further that I am not 15 financially or otherwise interested in the outcome of 16 the action. 17 Certified to by me on this, the 4th day 18 of December, 2022. 19 20 21 VANESSA J. THEISEN, Texas CSR, RPR Texas Cert No. 3238 Expiration Date: 10/31/23 Integrity Legal Support Solutions Firm Registration No. 528 23 9901 Brodie Ln., Ste. 160-400 Austin, Texas 78748 24 (512) 320-8690 www.integritylegal.support 25</p>	